IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.32/1999
WITH
CROSS OBJECTION NO. 2/2001

1. State of Goa
through Dy. Collector & L.A.O.
Quepem.

2. Executive Engineer,
P.W.D. (W.D. XXV),
Gogal, Margao. ..... Appellants.

V/s.

Joaquim B. Crasto,
Sirlim, Chinchinim, Salcete,Goa. ..... Respondent.

Ms. Winnie Coutinho, Government Advocate for the appellants.

Mr. S. S. Kakodkar, Advocate for the respondent.

CORAM : R.M. LODHA, J.

DATE : 6TH OCTOBER, 2005.

ORAL JUDGMENT

The IInd Additional District Judge, South Goa, at Margao in Land Acquisition Case No.157/92 by his Judgment and Award dated 5.1.1999 fixed the market value of the acquired land at the rate of

Rs.100/- per sq. metre on the date of publication of Notification under Section 4 of the Land Acquisition Act. Aggrieved thereby, the present first appeal has been preferred by the State of Goa through the Deputy Collector (Land Acquisition Officer) at Quepem and the Executive Engineer, P.W.D. (W.D.XXV), Gogal Margao.

2. The Government of Goa issued Notification dated 11.5.1988 that was published in the Official Gazette on 4.8.1988 whereby the land admeasuring 305 sq. metres from the property surveyed under Survey No.433/4 of Village Chinchinim, Salcete Taluka along with other land was sought to be acquired for widening and improvement of National Highway No.17. Survey No.433/4 in all admeasured 875 sq. metres. The Land Acquisition Officer vide his Award dated 11.10.1991 awarded compensation at the rate of Rs.13/- per sq. metre. The respondent herein (claimant) was dissatisfied with the award of the Land Acquisition Officer and sought a reference claiming compensation of the acquired land at the rate of Rs.200/- per sq. metre. The claimant also claimed that he was entitled to Rs.20,000/- towards the construction of retention wall and compensation for 12 coconut trees standing on the acquired land at the rate of Rs.3000/- per coconut tree.

3. Before the Reference Court, the claimant examined his wife Janet Crasto (AW.1) and Rosa Florina Coutinho (AW.2). She produced

two sale deeds (Exhibit AW.2/A and Exhibit AW.2/B).

4. The Reference Court, in the light of the evidence that was produced before it, after hearing the parties, fixed the market value of the acquired land as on 4.8.1988 at the rate of Rs.100/- per sq. metre. The Reference Court held that the claimant was not entitled to compensation for the coconut trees at the rate of Rs.3000/- per coconut tree and, accordingly, disposed of the reference on 5.1.1999.

5. As already indicated above, aggrieved by the said Judgment and Award dated 5.1.1999 the State of Goa and the Executive Engineer have filed this first appeal. The claimant has filed cross objections to the extent he was denied compensation at the rate of Rs.200/- per sq. metre and compensation for the coconut trees at the rate of Rs.3,000/- per coconut tree.

6. I heard Ms. Winnie Coutinho, the learned Government Advocate and Mr. S. S. Kakodkar, the learned Advocate for the respondent.

7. In support of the first appeal, the learned Government Advocate submitted that the reference Court failed to apply the correct principles for determining the market value of the acquired land.

According to the learned Government Advocate, the acquired land was one metre above the road level and by keeping that factor in mind, the Reference Court ought to have given an appropriate deduction. The learned Government Advocate would submit that there was no justification for the Reference Court in enhancing the compensation at the rate of Rs.100/- per sq. metre.

8. On the other hand, Mr. S.S. Kakodkar, the learned Counsel for the respondent submitted that the market value fixed by the Reference Court at the rate of Rs.100/- per sq. metres was rather on lower side and there was no justification for the Reference Court in applying deduction of 50 % outright from the price in the sale-deed (Exhibit AW.2/B) for arriving at the market rate on the ground that the acquired land was situated adjacent to the national highway and was within the setback area. The learned Advocate for the respondent submitted that the claimant is not desirous of pressing the cross objections for the enhancement in so far as award of compensation at the rate of Rs.100/- per sq. metre for the acquired land is concerned, it being just and proper, warrants no interference.

9. That the entire area of the claimant's property comprised 875 sq. metres is not in dispute. The said property was surveyed under Survey No.433/4 of Village Chinchinim. Out of the said property, an

area of 305 sq. metres has been acquired for widening and improvement of the National Highway No.17. There is evidence to show that the acquired land is adjacent to Margao-Karwar National Highway. As a matter of fact, it is for this reason that for widening and improvement of that highway the respondent's land has been acquired along with other lands. The acquired land is close to bus-stop as per evidence of AW.1. The church, the market, the school, the Bank and the Post Office are not far off. It appears from the evidence of AW.2, duly supported by Exhibit AW.2/B (Sale Deed) that a plot of land bearing Survey No.421/2 admeasuring about 402 sq. metres was sold at the rate of Rs.175/- per sq. metre vide Sale Deed dated 13.8.1985 (Exhibit AW.2/B). This very plot was later on sold vide Sale Deed Exhibit AW.2/A on 28.9.1990 at the rate of Rs.250/- per sq. metre. That plot of land which was sold vide Exhibit AW.2/B initially in the year 1985 and subsequently vide Sale Deed Exhibit AW.2/A in the year 1990 is situate in the same village. That plot is also situated by the side of Margao Karwar National Highway. It is not in dispute that the plot that was sold vide Exhibit AW.2/A and Exhibit AW.2/B is comparable with the acquired land. Was the Reference Court wrong in taking into consideration the Sale Deed dated 13.8.1985 (Exhibit DW.2/B) as the basis for determining the market value of the acquired land on 4.8.1988. Not so. Though, the deduction of 50 % applied by the Reference Court on the ground that the acquired land was situated adjacent to the National Highway and

within the setback area and that the acquired land was not suitable for construction purpose being adjacent to the National Highway may not be correct being on higher side but the same was not put in issue by the learned Counsel for the claimant by not pressing the cross objections. In any case, there is no justification for deduction by more than 50 % . As a matter of fact, the Reference Court was not justified in observing that the acquired land was not suitable for construction being adjacent to the National Highway and within the setback area. Be that as it may, I uphold 50 % deduction from the sale-price mentioned in the sale deed dated 13.08.1985 and maintain 10 % increase per year and the conclusion of the Reference Court that the market value of the acquired land was Rs.100/- per sq. metre on 4.8.1988. There being no evidence to the contrary that the land price in the area went southward during the period from 1985 to 1988, the 10 % increase in the rate of the land per year appears to be justified.

10. In Chimanlal Hargovinddas v. Special Land Acquisition Officer, Poona and anr. AIR 1988 SC 1652, the Supreme Court laid down the following guidelines for determining the market value of the land on the date of publication of notification under Section 4 of the Land Acquisition Act :

> " 4. The following factors must be etched on the mental screen :
>
> (1)A reference under Section 18 of the Land

Acquisition Act is not an appeal against the award and the Court cannot take into account the material relied upon by the Land Acquisition Officer in his Award unless the same material is produced and proved before the court.

(2)So also the Award of the Land Acquisition Officer is not to be treated as a judgment of the trial Court open or exposed to challenge before the Court hearing the Reference. It is merely an offer made by the Land Acquisition Officer and the material utilised by him for making his valuation cannot be utilised by the Court unless produced and proved before it. It is not the function of the Court to sit in appeal against the Award, approve or disapprove its reasoning, or correct its error or affirm, modify or reverse the conclusion reached by the Land Acquisition Officer, as if it were an appellate Court.

(3)The Court has to treat the reference as an original proceeding before it and determine the market value afresh on the basis of the material produced before it.

(4)The claimant is in the position of a plaintiff who has to show that the price offered for his land in the award is inadequate on the basis of the materials produced in the Court. Of course the materials placed and proved by the other side can also be taken into account for this purpose.

(5)The market value of land under acquisition has to be determined as on the crucial date of publication of the notification under S.4 of the

Land Acquisition Act (dates of Notifications under Ss.6 and 9 are irrelevant).

(6)The determination has to be made standing on the date line of valuation (date of publication of notification under S.4) as if the valuer is a hypothetical purchaser willing to purchase land from the open market and is prepared to pay a reasonable price as on that day. It has also to be assumed that the vendor is willing to sell the land at a reasonable price.

(7)In doing so by the instances method, the Court has to correlate the market value reflected in the most comparable instance which provides the index of market value.

(8)Only genuine instances have to be taken into account. (Sometimes instances are rigged up in anticipation of Acquisition of land).

(9)Even post-notification instances can be taken into account (1) if they are very proximate, (2) genuine and (3) the acquisition itself has not motivated the purchaser to pay a higher price on account of the resultant improvement in development prospects.

(10)The most comparable instances out of the genuine instances have to be identified on the following considerations :

(i) proximity from time angle.

(ii) proximity from situation angle.

(11)Having identified the instances which provide the index of market value the price reflected therein may be taken as the norm and the

market value of the land under acquisition may be deduced by making suitable adjustments for the plus and minus factors vis-a-vis land under acquisition by placing the two in juxtaposition.

(12) A balance-sheet of plus and minus factors may be drawn for this purpose and the relevant factors may be evaluated in terms of price variation as a prudent purchaser would do.

(13) The market value of the land under acquisition has thereafter to be deduced by loading the price reflected in the instance taken as norm for plus factors and unloading it for minus factors.

Plus factors

1. Smallness of size.
2. Proximity to a road.
3. Frontage on a road.
4. Nearness to developed area.
5. Regular shape.
6. Level vis-a-vis land under acquisition.
7. Special value for an owner of an adjoining property to whom it may have some very special advantage.

(14) The exercise indicated in clauses (11) to (13) has to be undertaken in a common sense manner as a prudent man of the world of business would do. We may illustrate some such illustrative (not exhaustive) factors :-

(for table see below)

(15) The evaluation of these factors of course depends on the facts of each case. There cannot be any hard and fast or rigid rule. Common

sense is the best and most reliable guide. For instance, take the factor regarding the size. A building plot of land say 500 to 1000 sq. yds. cannot be compared with a large tract or block of land of say 10000 eq. yds. or more. Firstly while a smaller plot is within the reach of many, a large block of land will have to be developed by preparing a lay out, carving out roads, leaving open space, plotting out smaller plots, waiting for purchasers (meanwhile the invested money will be blocked up) and the hazards of an entrepreneur. The factor can be discounted by making a deduction by way of an allowance at an appropriate rate ranging approx. between 20% to 50% to account for land required to be set apart for carving out lands and plotting out small plots. The discounting will to some extent also depend on whether it is a rural area or urban area, whether building activity is picking up, and whether waiting period during which the capital of the entrepreneur would be locked up, will be longer or shorter and the attendant hazards.

Minus factors

1. Largeness of area.
2. Situation in the interior at a distance from the road.
3. Narrow strip of land with very small frontage compared to depth.
4. Lower level requiring the depressed portion to be filled up.

5. Remoteness from developed locality.

6. Some special disadvantageous factor which would deter a purchaser.

(16) Every case must be dealt with on its own fact pattern bearing in mind all these factors as a prudent purchaser of land in which position the Judge must place himself.

(17) These are general guidelines to be applied with understanding informed with common sense.

11. Keeping the aforesaid factors in mind, I find that the Reference Court has correctly taken into account the market value reflected in the sale instance Exhibit AW.2/B as the basis. That sale instance pertains to a small parcel of land like the acquired land. That land abutted the National Highway as the acquired land. The land that was sold vide Sale Deed Exhibit AW.2/B and the acquired land are in the same village and not very far off. The market value reflected therein has been unloaded to account for the minus factor, particularly that the acquired land was part of setback area and thereby 50 % deduction has been made. The increase of 10 % per year taking market value of the acquired land in the year 1985 at the rate of Rs.87/- per sq. metre cannot be said to be unreasonable. It is established from Exh. AW.2/A that prices of the immovable properties increased year-after-year in Goa in eighties. There is no evidence to the contrary. Thus, the market value of Rs.100/- per sq. metre fixed by the reference Court is neither

unrealistic nor excessive.

12. The contention of the learned Government Advocate that the level of the acquired land being one metre higher than the road level, some deduction needed to be made is wholly misconceived. As to on what basis this argument has been advanced is not shown. As a matter of common knowledge, the parcel of the land at the level higher than the road does not suffer from any minus factor like the land that is below the road level.

13. Having taken into account all the relevant factors, I am of the view that the market value fixed by the reference Court at the rate of Rs.100/- per sq. metre is reasonable and realistic; it is based on the evidence on record and cannot be said to suffer from application of any erroneous principle.

14. In view of the foregoing reasons, the appeal as well as the cross objections are dismissed with no order as to costs.

R.M. LODHA, J.

ssm